CRIMINAL PROCEDURE IN THE UNITED STATES.

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DURING the past summer a national conference on criminal law and criminology was held at Chicago, which inaugurated a movement to promote the study and solution of what the President of the United States has recently declared to be the most important question before the American people to-day. There were in attendance at this conference some two hundred delegates from many parts of the country, representing the various professions and organizations directly or indirectly concerned with the administration of penal justice, including practising lawyers, prosecuting attorneys, judges of the courts, jurists, professors of criminal law in the universities, criminologists, sociologists and alienists. A significant and encouraging feature of the conference was the virtual unanimity of opinion among the delegates, lawyers and laymen alike, that our present methods of criminal procedure are in many respects antiquated, largely inefficient under modern conditions and a reproach to our civilization. So impressed was the conference with the importance of the question that it resolved itself into a permanent organization to be known as the American Institute of Criminal Law and Criminology to meet annually for the purpose of furthering the scientific study of crime, criminal law and procedure; of formulating and promoting measures for solving the problems connected therewith; and of co-ordinating the efforts of individuals and of organizations interested in the administration of certain and speedy justice. As one of the means to this end it was decided to establish a journal to be devoted to the scientific study of criminal law and criminology, and a movement was started looking toward the

collection by the national and state governments of more comprehensive and reliable statistical information concerning the amount and nature of crime annually committed in the United States and the efficiency of existing agencies and instrumentalities for the detection and punishment of criminals.

If we compare American methods of criminal procedure with those of England and the Continent we cannot fail to be impressed with the fact that the chief causes of the wide-spread popular dissatisfaction with our own system are its cumbersomeness, the slowness with which criminal trials are started and expedited, the importance which is attached to technicalities and mere matters of practice at the expense of substantive justice and an altogether too wide latitude of appeal. Notwithstanding the constitutional guarantee of "speedy" trials, the dockets of the criminal courts nearly everywhere are so congested with cases that trials cannot be reached for months and sometimes for years. It was put in evidence before the New York State Commission on the Law's Delay in 1903 that on the 1st of November of that year there were 10,000 untried jury cases on the calendar of the first department of the supreme court of that state. The court was then three years behind with its work and it required from one and a half to two years to reach a jury trial in Kings County. The clerk of the superior court of Cook County, Illinois, informed the writer in April, 1907, that there were then pending 12,653 cases before the superior court and 18,828 cases before the circuit court, the former being more than a year behind with its business and the latter about two years in arrears.

The Iroquois Theatre fire case in Chicago may be cited as a typical instance of the delays in bringing cases to trial. The burning of the theatre, which resulted in the loss of nearly six hundred lives, occurred on December 30th, 1903. Two months thereafter the owner of the theatre was indicted. The indictment was held under advisement for a period of three months by the court and finally quashed. On March 4th, 1905, a new indictment was found and was held by the judge for a period of seven months and a half. Finally, in March, 1907, three years and four months after the commission of the offence charged, the case was brought to trial only to result in the release of the accused on a technicality. Such delays are not only a wrong to the accused, if he be innocent, but they always work an injury to society

and often defeat the ends of justice itself. No deterrent is so powerful as swift and certain punishment. Long lapse of time between the commission of an offence and the trial induces pity, causes loss of interest on the part of the public prosecutor and not infrequently renders conviction difficult if not impossible by the death of important witnesses, their removal from the jurisdiction of the court or from lapses of memory regarding material facts connected with the crime.

What has come to be one of the most notorious causes of delays in starting trials is our method of selecting juries—a task which ordinarily ought not to consume more than an hour or two of time, as is the rule in England and on the Continent wherever the jury system prevails, but which in America often requires weeks and months. Two of the most flagrant cases of this sort recently occurred in Chicago where nine and a half weeks were required to select a jury to try a labor union slugger named Gilhooley and thirteen weeks to choose a jury to try Cornelius Shea. The impanelling of the jury in the latter case involved the summoning of 10,000 veniremen and an examination of nearly 5,000 talesmen at a cost of forty or fifty thousand dollars to the State. A more recent case has just occurred in San Francisco where ninety-one days were consumed in the effort to choose a jury to try the president of a street-car company on the charge of bribery. In America it is assumed that one who may have casually or otherwise formed and expressed an opinion upon the merits of the case from hearsay evidence is incapable of rendering a verdict according to the legal evidence when it points to a different conclusion from that at which he may have already arrived. Such a rule renders it exceedingly difficult in important cases to find twelve men who are legally qualified to try the case. In order to lay the foundation for challenges, it has become a common practice of counsel to interrogate prospective jurors at unnecessary length concerning their domestic, social and religious affairs, the newspapers they read, their business relationships and many other matters which seem to a layman to be irrelevant. In the Gilhooley case referred to above counsel for the defence examined a prospective juror for nearly two hours, and the State's attorney put him through a similar ordeal. Under such circumstances the selection was at the rate of about one juror per week.

In England the judges refuse to permit the long-drawn-out,

rambling and irrelevant interrogatories in the examination of jurors such as have come to be a regular feature of every important trial in this country. There a prospective juror is simply asked whether he is related to either of the parties and whether he knows of any reason why he cannot return a verdict in accordance with the law and the evidence as brought out in the trial. To an Englishman any further examination seems superfluous and a waste of time. "Think of taking a month or six weeks to select a jury," says ex-Justice Henry B. Brown of the United States Supreme Court, "and requiring each prospective juror to give a history of his life and his opinions upon every conceivable subject for the apparent purpose of laying the ground, not for a challenge for cause, but for a peremptory challenge." "When I was a judge in the court of original jurisdiction," he continues, "in all of the fifteen years' time I do not think I ever spent more than two or three hours' time impanelling a jury."

T. Newton Crane, Esq., formerly of the American bar, but for some years past a prominent barrister of London, in a letter to Hon. Joseph H. Choate, dated March 31st, 1903, describing the English procedure of impanelling jurors, said: "The examination of jurors on their *voir dire* is absolutely unknown in England, while many lawyers who have been in practice for twenty years or more have never known a juror to be objected to or excused for cause. It not infrequently happens that the same twelve jurymen will hear three cases without leaving the box."* Rarely more than an hour is consumed there in the selection of a jury for the trial of the most important case. Furthermore, in England and on the Continent the judge is allowed to examine into the qualifications and fitness of veniremen before they are called for examination by counsel, with the result that the unfit are weeded out beforehand and the task of selecting the panel greatly simplified. Judge Barnes of Chicago has recommended the introduction of this sensible reform into our procedure as a means of diminishing an already large and increasing evil.

One result of the long delays involved in the selection of the jury is to increase the aversion to jury duty upon the part of professional and business men. It is not at all strange that a man

* This letter is published in the Report of the New York Commission on the Law's Delay, 1903, p. 111.

who is confronted by the prospect of being dragged away from his home and business and kept in a state of virtual imprisonment for days, weeks and even months before the trial is really started should, when asked if he knows of any reason why he cannot render an impartial verdict, resolve the doubt in favor of his own liberty and comfort by professing a prejudice which he really does not feel. This natural tendency to shirk jury duty could be greatly reduced by providing more adequate accommodations for the physical comfort of jurors and by removing the petty and unreasonable restrictions on their liberty, such as are inconsistent with the idea that jury service is a dignified and highly honorable public service. A practical illustration of the truth of this statement was furnished in the second trial of Cornelius Shea in Chicago, when the presiding judge announced at the beginning of the trial that jurors would be treated not as prisoners undergoing punishment, but as citizens performing an important public service. In some communities steps have been taken to ameliorate the hardships of jury service by providing more comfortable and homelike quarters for jurors. In Chicago, for example, luxurious suites of bedrooms, bath-rooms, a dining-room, a kitchen and a reading-room have been fitted up on the top floor of the criminal courts building for the exclusive use of jurors, in the belief that such accommodations will greatly minimize the tendency of men accustomed to the comforts of home life to evade jury service. In this connection I venture to express the opinion that the wholesale exemptions from jury duty now allowed to many professional classes ought to be abolished and every qualified male citizen between certain ages required to do jury service when called upon. The result of the numerous exemptions now allowed is to eliminate a large proportion of the best qualified citizens and to restrict jury duty, to a very considerable degree, to the most unfit classes.

One of the most prolific sources of popular dissatisfaction with our methods of administering criminal justice is the practice of the appellate tribunals of reversing the decisions of trial courts upon technical errors and granting new trials to criminals who have already been convicted. Justice Brown hardly exaggerated the facts when, criticising the American practice of allowing appeals, almost as a matter of course, he recently remarked that the rendering of the verdict was only the beginning of the

trial in serious criminal cases. The supreme court reports of all our states furnish ample evidence of the truth of Justice Brown's statement. We have reached a point where it is almost impossible to punish a criminal after a single trial, especially if he can command the services of able and ingenious counsel. Our judicial annals show that a large proportion of the criminals of this country who have been punished in recent years have had the benefit of at least two trials and convictions. It has been abundantly established by experience that postponements and new trials more often result in defeating justice than in promoting it. It is well known that after the lapse of a certain period it is almost impossible to convict the worst criminal. After the first trial the very stars in their courses seem to fight for him. Public interest languishes or becomes indifferent, the pressure of outraged opinion which operates as a powerful stimulus to the prosecuting attorney ceases, witnesses die or forget material facts, the sense of responsibility on the part of jurors diminishes as the memory of the crime recedes in the past and the case is often abandoned or the offender acquitted because public sentiment no longer seems to demand his punishment.

The doctrine of some tribunals that error in the procedure of the trial court, however trifling and immaterial, is presumed to affect prejudicially the rights of the accused and that consequently wherever such error is found it is the right and duty of appellate courts to grant new trials, is doing more than anything else to multiply appeals, defeat the administration of justice and impair public confidence in the efficiency of the courts. Some of the instances of reversals on account of presumed prejudice arising from technical errors in the procedure of the trial court would, says Wigmore, one of the highest authorities on the law of evidence, seem incredible even in the justice of a tribe of fetish-worshipping Africans. Some of the trivial reasons that have actually been assigned by the appellate courts of our states for allowing new trials are the following: because the name of the State was abbreviated in the indictment; because the word "feloniously" was omitted from the indictment, although the evidence showed that the crime was committed with felonious intent; because the indictment merely stated that the victim "did then die" instead of stating that he "did then and there die"; because the word

"maliciously" was omitted from an indictment charging the accused with arson, although it stated that the offence was committed "wilfully and feloniously"; because the indictment charged the defendant with "killing and murdering" instead of stating that he "did kill and murder" (the word "did" being held essential to a valid indictment); because the indictment charged the defendant with intent to "kill or injure" instead of to "kill and injure"; because the words "person or human being" were omitted from the indictment; because the defendant was allowed to offer evidence as to his good reputation for honesty and integrity, but not as to his reputation for truth and veracity (thus assuming that the jury might not believe the testimony as to the former, but might believe it as to the latter); because the judge was absent from the trial three minutes; because the words "on oath" were omitted from the indictment; because the officer who summoned the jury was not specially sworn; because the evidence on which a notorious robber was convicted failed to show whether the money stolen was coin or bills; because the property stolen (in this case 800 pounds of cotton) was not alleged to have any value; because the indictment which charged the defendant with burning a creamery described the offence as "arson," whereas arson is the burning of a dwelling; because an indictment charging the defendant with committing a crime at Westminster failed to state that it was the *town* of Westminster; etc. The reports of the Supreme Court of the United States likewise are not without their contributions to this phase of American procedure. In a recent case this court reversed the decision of a State court because it did not appear from the record that the accused had been arraigned and given an opportunity to enter a plea of not guilty, as if he could have been tried without an arraignment and a plea. One of the justices of the Supreme Court of Mississippi in an address before the State Bar Association of that State on May 4th of this year reviewed at length some of the instances of reversals in Mississippi for technical errors and declared that they were a reproach to the intelligence of the American people and an injustice to the civilization of the country. The rule requiring an indictment to be encumbered with useless verbiage and phraseology employed a hundred years ago in order to be sustained by the appellate courts, he declared, was a "constitutional ab-

surdity," the effect of which was to defeat rather than promote the ends of justice.

The American practice of granting new trials for technical flaws in indictments is an inheritance from England in an age long since past. Lord Hale's criticism that "more offenders escape by the over-easy ear given to exceptions in indictments than by their own innocence . . . to the shame of the Government, to the reproach of the law, to the encouragement of villainy and to the dishonor of God" no longer applies to the English system, but it describes pretty accurately the situation in America. In England an indictment for murder is not required to describe in detail the manner of the killing, but it is sufficient to say that the killing was done wilfully, unlawfully and with malice. The only purpose of an indictment is to give the accused information of the offence with which he is charged so that he may know what he is expected to answer and be able to prepare his defence accordingly. The long, verbose, detailed recitals which encumber indictments in this country are not only not essential to give the accused such information, but they tend to introduce uncertainty and confusion and render conviction difficult because everything alleged must be proven in order to secure a conviction. To a person of common sense it seems absurd to set aside a decision simply because there is a variation between the allegation and the proof when the evidence shows that the thing done is of the same general nature as the thing charged.

The practice of reversing the decisions of lower courts for technicalities has a tendency to reduce the trial to the level of a contest over errors—a subtle game in which the one who plays the most skilfully often wins regardless of the real merits of the controversy. Every lawyer who has a doubtful case endeavors to get error into the record so as to secure a new trial in case his client is convicted, while the state's attorney strives with equal effort to keep it out. The judge, who is the umpire of the game, and not much more, is in the ordinary course of things requested to charge the jury on certain propositions, and if he refuses on any point, a bill of exceptions follows and the case goes up for review. In some jurisdictions if the judge fails for any reason to charge the jury on every point involved in the case and the defendant is convicted the latter may take an appeal. In other states the judge is allowed to charge the jury only on points to

which his attention has been called by counsel, and if he goes further the foundation for an appeal is laid, although the superfluous charge may not affect in the slightest degree the rights of the accused. Thus the judge is surrounded on every side by pitfalls and in intricate and long-drawn-out trials the task of steering clear of them is difficult indeed and few there are who escape being entrapped.

Another prolific cause of reversals and of new trials in America arises from errors in the admission or exclusion of evidence. According to the American practice the admission of irrelevant evidence is nearly always fatal and a new trial will be granted, although it may appear from the most incontrovertible proof that the defendant is guilty as charged. This practice is really a perversion of the early common-law rule. The original reason for prohibiting the admission of merely irrelevant evidence was not because its introduction was necessarily prejudicial to the rights of the accused, but because it tended to encumber uselessly the record and involved a waste of time. Consequently, an erroneous admission or rejection of such evidence did not in itself constitute a sufficient cause for setting aside a verdict and the granting of a new trial unless it appeared to the court from all the material evidence that a different result would probably have been reached. To presume that the admission of evidence which is objectionable merely because of its irrelevancy is prejudicial to the case of the accused is to presume that, although the jury are capable of weighing the material evidence, they are incapable of disregarding or discounting that which is immaterial. It is not only an unwarranted assumption, but a perversion of the principle upon which the jury system rests. In England this rule was abolished long ago, and in the conduct of a criminal trial little or no time is wasted by arguments and wrangles over such questions. On this point Justice Ingraham of the New York Supreme Court recently said: "I have heard cases tried in England quite a number of times, both at the Assizes and in London, and I do not think I ever heard five minutes given during a trial of a case to the discussion of questions of evidence. I have seen case after case go through without the question of evidence being raised at all."*

* Testimony before the New York Commission on the Law's Delay, 1903, p. 247.

A committee of the American Bar Association, after an investigation of the subject in 1887, reported that new trials were granted in forty-six per cent. of all cases brought under review in the appellate courts of this country. The New York State Commission on the Law's Delay authorized by act of the Legislature in 1903 found that the proportion in that State was forty-two per cent.* An examination which I made of the decisions of the Supreme Court of Illinois covering the years 1903-1905 revealed the fact that about forty per cent. of the criminal cases appealed were reversed upon errors, mostly of practice and procedure. A comparison of the percentage of reversals in America with that in England affords striking evidence of the different attitude taken by the English appellate courts toward questions of error in the trial of criminal cases. According to a report of the Master of Judicial Statistics in 1900, 337 cases were appealed in that year from the High Court of Justice and of these only fifteen were remanded for re-trial. In the year 1904 only nine out of 555 cases reviewed by the Court of Appeal were reversed.† It is a rule of the English procedure that a judgment or verdict of a trial court shall never be disturbed or a new trial granted for error if the evidence admitted is sufficient to justify the judgment or verdict; or, if evidence erroneously excluded would not in the opinion of the appellate court have led to a different result. In short, judgment is rendered on the merits of the case, and instead of presuming that error in the procedure of the court below is prejudicial to the case of the accused the reviewing tribunal acts on the presumption that it was harmless and makes it incumbent upon the appellant to show the contrary. One result of this rule has been to greatly diminish the number of appeals in England, not more than one case in ten being taken up for review as against one in every three or four in America. A defeated party knows that he cannot secure a new trial upon technical errors, and if he has no case on its merits there can be no incentive to take an appeal.

* Page 246.

† These statistics are taken from a letter of T. Newton Crane, Esq., of London, addressed to Hon. Joseph H. Choate March 31st, 1903, and printed in the Report of the New York Commission on the Law's Delay, p. 112. According to the same report there were only 1,272 cases appealed in all England in 1903, whereas in two departments of the New York Appellate Division (comprising New York City and Brooklyn) there were 2,952 appeals. (*Ibid.*, pp. 34, 76, 246.)

The opinion is spreading in this country, not only among laymen, but among candid and honest lawyers as well, that the interests of substantial justice and social order require a restriction of the right of appeal to more reasonable limits. Justice Gaynor of New York recently described the evil of our present procedure tersely when he declared that our appellate courts review too many things and that with us "appeals have come to be pretty nearly the principal thing." Another jurist less well known has aptly remarked that one difficulty with our present system is that it is based on the "fundamental idea that a trial and a decision are always wrong" and that every person charged with crime ought to be given at least two opportunities to establish his innocence.

The present wide latitude of appeal, though in theory open to all, is in fact practically closed to the poor on account of the expense involved. The rule thus operates to the great advantage of the well-to-do litigant by opening up avenues of escape which are in effect closed to the man without abundant means. The injustice of such a system, discriminating, as it does, against the poor, has recently been pointed out and dwelt upon by President Taft, President Woodrow Wilson of Princeton, and ex-President Andrew D. White of Cornell University in public addresses. It has come to be a common belief that the rich criminal with unlimited means at his command for employing able and ingenious counsel and for meeting the heavy costs of litigation in the higher courts can by means of appeals and new trials escape the punishment which he deserves and which he would receive were he a poor man practically restricted to a single trial. We venture to assert that it is no infringement upon the constitutional right of any man charged with crime and convicted by a unanimous verdict of a jury and with all the presumptions of the law in his favor to say that he shall not be given another opportunity to establish his innocence unless it can be affirmatively shown that substantial justice was not done him in the first trial.

No appellate court should be permitted to presume that every error found in the record of a trial court works prejudice to the cause of the accused and gives him a right to a new trial. The English rule of requiring the court before granting a new trial to be satisfied after an examination of all the evidence that the error complained of was prejudicial seems absolutely rea-

sonable and just. It is gratifying to note that this rule has been recommended by the American Bar Association, the bar associations of various States and is now being advocated by many able and distinguished jurists throughout the country. It has also been incorporated in the code of criminal procedure of the State of New York which provides that in capital cases the court of appeal must give judgment without regard to technical errors or defects or to exceptions which do not affect the substantial rights of the parties. The same rule has been incorporated in the recent law for the establishment of the Chicago municipal court. This law enacts that no order or judgment of the municipal court shall be reversed by the appellate court or the supreme court unless they shall be satisfied that the order or judgment was contrary to law and the evidence or resulted from substantial errors directly affecting the matters at issue.

In England until 1907, when a court of criminal appeal was created, no right of appeal in criminal cases was allowed, though, of course, the decision of a lower court could be reviewed upon writs of error. The Home Office was expected to correct judicial wrong in criminal cases by means of pardons granted to persons unjustly convicted. The advantage of the right of appeal in criminal cases for a long time seemed doubtful to the English, and they were led to introduce it only after a popular clamor following the terrible miscarriage of justice in the case of the unfortunate Adolf Beck in 1904. The opponents of appeal pointed out that such a system was expensive, cumbrous, dilatory and ineffective; asserted that it would substitute the judgment of a court with only the record before it for the judgment of twelve men who meet the witnesses face to face and hear the testimony from their own lips, and declared that it would tend greatly to diminish the sense of responsibility of jurors, since their verdict would not necessarily be final.

This view has not been without able supporters in America, though as yet the number has been small. President Taft, for example, in an address before the Yale Law School in 1905 asserted that: "If laws could be passed, either abolishing the right of criminal appeal and leaving to the pardoning power, as in England, the correction of judicial wrong; or, instead of that, if appeals must be allowed, then if a provision of law could be enacted by which no judgment of the court below should be reversed

except for an error which the court, after reading the entire evidence, can affirmatively say would have led to a different verdict, ninety-nine reversals out of one hundred under the present system would be avoided."

In England the judge occupies a commanding position in the trial which is wholly denied to him in America. He is not only vested with large power in the selection of juries, but is allowed to review and sum up the evidence, sift out the immaterial from the material, put the evidence before the jury in intelligible and coherent form, and, if the jurors have been confused and misled by the arguments of counsel, to set them right before giving the case into their hands. There is really no danger in this principle, since it does not in the slightest degree take away from the jury its power to determine the question of fact, but only helps it toward an intelligent decision by a sifting and clearing-up process. In America, as Judge Grosscup has remarked, the judge is practically not allowed to take part in the trial of criminal cases. His position is that of an umpire or a moderator rather than a judge in any real sense. The truth is, the Americans have gone to the extreme in exalting the function of the jury at the expense of the judge. There is still a wide-spread disposition as in Blackstone's day to worship it as a fetish and to look upon the judge with a sort of superstitious fear, though in nearly all the states the judges are popularly elected for comparatively short terms. Many eminent American jurists, among them President Taft, have complained of the position of impotency to which American judges have been reduced and have urged the restoration to them of some of the powers which they enjoyed originally at common law and which in England they enjoy to-day.

In other respects the English methods of administering criminal justice are acknowledged to be decidedly in advance of ours. The New York State Commission on the Law's Delay reported in 1903 that it was "profoundly impressed" with the English system of procedure and asserted that the English courts from having been the most dilatory in the world have become in recent years the most expeditious. The Commission further declared that we "could not do better than adopt some of these modern methods of procedure which have been so thoroughly tested in England and have proved to work so well." The difference between the efficiency of the English and American methods of

procedure is well illustrated by the Rayner and Thaw trials. In each case the facts were very similar and the plea was the same, namely, insanity. In the Rayner case the trial was started within a few days after the offence was committed, the jury was selected within an hour's time, and the trial was completed and the murderer convicted before the end of the first day. Thaw was brought to trial months after his crime was committed, and he was finally sent to an insane asylum after two trials which dragged through a period of a year and a half. Had he been convicted, appeals, reversals and new trials would have followed, and ultimately the case would in all probability have been carried to the United States Supreme Court. In any case there is no reason for believing that he would have been punished, if at all, within at least three years after committing his crime.

The English Master of Judicial Statistics in the letter to Hon. Joseph H. Choate already referred to, describing the promptness and despatch with which trials are conducted in England, stated that twenty-three judges handle all the litigation of England and Wales with a population of about 32,500,000 and that they actually try and determine an average of 5,000 cases a year, or more than twice as many as are tried by forty-three judges in New York and Kings Counties.* As I write, July 1st, 1909, there lies before me a copy of a news despatch which states that the English Court of Appeal has decided practically all the appeals that were on the docket at the beginning of the present term and that it is now disposing of cases that have been down for hearing less than five weeks. This seems wonderful indeed to us who are accustomed to a system under which our appellate courts are usually from one to three years behind with their dockets.

There is no longer any excuse for the retention of our present system in the form which it has come to possess. It is totally inconsistent with the standard of civilization which we have attained in other fields, and especially with our reputation for doing most things more rapidly than any other people. It is refreshing to note that the most candid members of the bench and bar are beginning to take a more common-sense view of the purpose of a judicial trial and are joining in the agitation for reform.

Everywhere state and local bar associations are discussing pro-

* This letter is published in the Report of the New York Commission on the Law's Delay, p. 76.

posed reforms and are appointing committees to investigate and report. The law journals and magazines are likewise turning their attention to the subject, and the state legislatures here and there are considering practice acts, the purpose of which is to provide a more simple, inexpensive, certain and expeditious procedure. We have reached a point when the lawyers and courts should take a different view of the fundamental purpose of a judicial trial, should manifest less disposition to subordinate substantive justice to matters of technical procedure and should proceed more on the theory that the primary purpose of a system of criminal justice is to protect the innocent members of society rather than the criminal class. Our present system which resolves all the presumptions of the law in favor of the criminal and none in favor of the outraged community had its origin in an age when there were over one hundred capital offences in the criminal code, when the accused was denied the right of counsel and all the other safeguards now thrown around him, when a jury was liable to be fined for contempt for returning a verdict against the Crown, and when offenders were cruelly punished for insignificant offences. The old severity of the penal code has long since passed away, yet the ancient procedure with all its loopholes of escape and all the safeguards and presumptions in favor of the criminal is, to a large extent, still retained. It is largely inapplicable to present conditions, and in the interest of justice, as well as social order and security, it ought to be modified, as it has been in England, where it originated.

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